is deemed necessary to the sanctity of married intercourse. To accomplish this protection, however, it is not necessary to prevent a husband from testifying against a presumption that he seduced his wife before he married her, or to prevent a wife from testifying that she was not seduced by the husband. Moreover cases undoubtedly have arisen, and may arise, where it would be unreasonable to suppose that the husband knew of his wife's condition at the time of marriage. To exclude the testimony in question in such a case might involve a grave injustice both to the husband and to the real heirs. In a case which recently came up before the House of Lords, it being shown that a child was born six months after marriage, and the jury being satisfied by expert testimony that conception must have taken place before marriage, it was sought to introduce a deposition by the husband that before he married his wife he had never had sexual intercourse with her, and that soon after she confessed that at the time of marriage she was with child by another man. Although urged that this was testimony of the parents to non-access, the evidence was held admissible, and a former English authority [6] overruled. *The Poulett Peerage*, [1903] A. C. 395. The case is defensible upon the grounds indicated above, and its result seems preferable to that reached in the United States decisions.

THE GARNISHMENT OF A DEBT. — Jurisdiction to garnish a debt not payable at a particular place, according to some cases, cannot be gained without personal service on the creditor.[1] These cases are overruled by the decision of the Supreme Court of the United States in Chicago, etc., R. R. Co. *v.* Sturm,[2] which holds that service on the garnishee alone, obtained in the state of his domicile, gives jurisdiction. That decision was based on reasoning and *dicta* which would allow jurisdiction irrespective of domicile wherever such service is obtained, — a view adopted by some previous cases.[3] The rejection of these *dicta* in the recent West Virginia case of *Pennsylvania R. R.* v. *Rogers*, 44 S. E. Rep. 300, suggests an inquiry into the basis of jurisdiction in such cases.

A man not served with process may be deprived of his property only by a state having jurisdiction *in rem* of that property.[4] Jurisdiction *in rem* depends on power over the *res*. A state has power to control, by process of its courts, physical objects within its territorial limits. It is for this reason [5] that, aside from considerations of comity, the sole test of jurisdiction of a corporeal *res* is its physical *situs*. As to an incorporeal *res* there is no such simple test, since an intangible thing can clearly have no actual physical *situs*. To declare, as the courts are fond of doing, that a debt has a *situs* in a particular place can amount only to saying that it will be treated, for purposes of jurisdiction, as a tangible *res* would be treated if it had such a *situs*. Legislative or judicial fiat cannot alone create jurisdiction. Such a declaration, therefore, is justified only if the state has in fact the same power to control the debt as to control a tangible *res* whose *situs* is within its territory.

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[6] Anon. *v.* Anon., 22 Beav. 481; 23 Beav. 273.

[1] See cases collected in Minor, Confl. of L., § 125.
[2] 174 U. S. 710.
[3] Collected in Minor, Confl. of L., § 125.
[4] Pennoyer *v.* Neff, 95 U. S. 714.
[5] See Sutherland *v.* Nat'l Bank, 78 Ky. 250.

Control of a debt consists in compelling its payment and release. This, manifestly, a state cannot do, unless it has jurisdiction over the releasing as well as the paying party. Personal service on the debtor-creditor would, therefore, on theory, seem essential to jurisdiction.

As a matter of practice, to require such personal service seems the only way of doing justice to the defendant. When a man leaves a chattel in another state, not in the care of somebody who would know of its seizure, he is fairly presumed to consent that it shall be dealt with on the insufficient notice of service by publication. But no creditor thinks of leaving a caretaker of his debt when he leaves his obligor behind him. Payment in his absence to an alleged creditor will frequently be without his knowledge or any chance on his part to dispute the alleged claim. This offers a golden opportunity to fraudulent garnishors. The rights of *bona fide* garnishors, on the other hand, would be made only slightly more difficult to enforce by a rule requiring service on the debtor-creditor. Since in the vast majority of cases the garnishee is a corporation doing business in the state of the defendant's residence, personal service on both may be had there. The reasoning in the case of Chicago, etc., R. R. *v.* Sturm, would seem unfortunate, then, both on theory and in practice; and the West Virginia court did well not to follow it in a case not exactly covered by that decision.

RIGHTS OF CREDITORS OF THE DONEE OF A POWER OF APPOINTMENT BY WILL IN THE PROPERTY SUBJECT TO THE POWER. — In determining under what circumstances the creditors of a person possessing a power of appointment by will can reach the property subject to the power, courts of equity have generally reached results which are consistent with the general principles of equity jurisdiction. The donee of such a power has no estate in the property subject to the power; it follows, then, that if he dies without exercising the power, equity will not subject the property to the claims of his creditors.[1] Neither will equity compel an execution of the power in favor of the donee's creditors, for a compelled execution is held not to be an appointment within the terms of the power.[2] If, however, the donee exercises the power in favor of a volunteer, and then dies insolvent, the appointee will be postponed to the creditors. The donee should have exercised the power in favor of his creditors; its exercise in favor of a volunteer was in the nature of a fraud upon them, and the appointee will be considered a constructive trustee of the property which he has obtained.[3] Recently the question arose under what circumstances the appointee of such a power is a volunteer, and in deciding it the House of Lords appears to have added a peculiar doctrine to the law of powers. In consideration of a loan, the donee of a power of appointment by will agreed to make the debt a first charge on the fund subject to the power. He died insolvent, leaving a will executed according to this agreement. The court held that the appointee was a volunteer, and that the fund should be divided among the general creditors of the deceased. *Beyfus* v. *Lawley*, [1903] A. C. 411.

A contract for the exercise of a power of appointment by will is peculiar, since, as previously stated, a court of equity will not compel specific per-

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[1] Jones *v.* Clifton, 101 U. S. 225.
[2] See Thacker *v.* Key, L. R. 8 Eq. 408.
[3] *In re* Harvey's Estate, 13 Ch. D. 216.